
SENATE BILL 6553

State of Washington

54th Legislature

1996 Regular Session

By Senators Prentice, Hale, Fraser and Winsley

Read first time 01/17/96. Referred to Committee on Financial Institutions & Housing.

1 AN ACT Relating to judicial authority to order inspections;
2 amending RCW 35.80.030; adding a new section to chapter 19.27 RCW; and
3 adding a new section to chapter 2.28 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 35.80.030 and 1989 c 133 s 3 are each amended to read
6 as follows:

7 (1) Whenever the local governing body of a municipality finds that
8 one or more conditions of the character described in RCW 35.80.010
9 exist within its territorial limits, said governing body may adopt
10 ordinances relating to such dwellings, buildings, structures, or
11 premises. Such ordinances may provide for the following:

12 (a) That an "improvement board" or officer be designated or
13 appointed to exercise the powers assigned to such board or officer by
14 the ordinance as specified herein. Said board or officer may be an
15 existing municipal board or officer in the municipality, or may be a
16 separate board or officer appointed solely for the purpose of
17 exercising the powers assigned by said ordinance.

18 If a board is created, the ordinance shall specify the terms,
19 method of appointment, and type of membership of said board, which may

1 be limited, if the local governing body chooses, to public officers as
2 herein defined.

3 (b) If a board is created, a public officer, other than a member of
4 the improvement board, may be designated to work with the board and
5 carry out the duties and exercise the powers assigned to said public
6 officer by the ordinance.

7 (c) That if, after a preliminary investigation of any dwelling,
8 building, structure, or premises, the board or officer finds that it is
9 unfit for human habitation or other use, he shall cause to be served
10 either personally or by certified mail, with return receipt requested,
11 upon all persons having any interest therein, as shown upon the records
12 of the auditor's office of the county in which such property is
13 located, and shall post in a conspicuous place on such property, a
14 complaint stating in what respects such dwelling, building, structure,
15 or premises is unfit for human habitation or other use. If the
16 whereabouts of any of such persons is unknown and the same cannot be
17 ascertained by the board or officer in the exercise of reasonable
18 diligence, and the board or officer makes an affidavit to that effect,
19 then the serving of such complaint or order upon such persons may be
20 made either by personal service or by mailing a copy of the complaint
21 and order by certified mail, postage prepaid, return receipt requested,
22 to each such person at the address of the building involved in the
23 proceedings, and mailing a copy of the complaint and order by first
24 class mail to any address of each such person in the records of the
25 county assessor or the county auditor for the county where the property
26 is located. Such complaint shall contain a notice that a hearing will
27 be held before the board or officer, at a place therein fixed, not less
28 than ten days nor more than thirty days after the serving of said
29 complaint; and that all parties in interest shall be given the right to
30 file an answer to the complaint, to appear in person, or otherwise, and
31 to give testimony at the time and place in the complaint. The rules of
32 evidence prevailing in courts of law or equity shall not be controlling
33 in hearings before the board or officer. A copy of such complaint
34 shall also be filed with the auditor of the county in which the
35 dwelling, building, structure, or (~~premise~~ ~~[premises]~~) premises is
36 located, and such filing of the complaint or order shall have the same
37 force and effect as other lis pendens notices provided by law.

38 (d) That the board or officer may determine that a dwelling,
39 building, structure, or premises is unfit for human habitation or other

1 use if it finds that conditions exist in such dwelling, building,
2 structure, or premises which are dangerous or injurious to the health
3 or safety of the occupants of such dwelling, building, structure, or
4 premises, the occupants of neighboring dwellings, or other residents of
5 such municipality. Such conditions may include the following, without
6 limitations: Defects therein increasing the hazards of fire or
7 accident; inadequate ventilation, light, or sanitary facilities,
8 dilapidation, disrepair, structural defects, uncleanliness,
9 overcrowding, or inadequate drainage. The ordinance shall state
10 reasonable and minimum standards covering such conditions, including
11 those contained in ordinances adopted in accordance with subdivision
12 (7)(a) herein, to guide the board or the public officer and the agents
13 and employees of either, in determining the fitness of a dwelling for
14 human habitation, or building, structure, or premises for other use.

15 (e) That the determination of whether a dwelling, building,
16 structure, or premises should be repaired or demolished, shall be based
17 on specific stated standards on (i) the degree of structural
18 deterioration of the dwelling, building, structure, or premises, or
19 (ii) the relationship that the estimated cost of repair bears to the
20 value of the dwelling, building, structure, or premises, with the
21 method of determining this value to be specified in the ordinance.

22 (f) That if, after the required hearing, the board or officer
23 determines that the dwelling is unfit for human habitation, or building
24 or structure or premises is unfit for other use, it shall state in
25 writing its findings of fact in support of such determination, and
26 shall issue and cause to be served upon the owner or party in interest
27 thereof, as is provided in subdivision (1)(c), and shall post in a
28 conspicuous place on said property, an order which (i) requires the
29 owner or party in interest, within the time specified in the order, to
30 repair, alter, or improve such dwelling, building, structure, or
31 premises to render it fit for human habitation, or for other use, or to
32 vacate and close the dwelling, building, structure, or premises, if
33 such course of action is deemed proper on the basis of the standards
34 set forth as required in subdivision (1)(e); or (ii) requires the owner
35 or party in interest, within the time specified in the order, to remove
36 or demolish such dwelling, building, structure, or premises, if this
37 course of action is deemed proper on the basis of said standards. If
38 no appeal is filed, a copy of such order shall be filed with the

1 auditor of the county in which the dwelling, building, structure, or
2 premises is located.

3 (g) The owner or any party in interest, within thirty days from the
4 date of service upon the owner and posting of an order issued by the
5 board under the provisions of subdivision (c) of this subsection, may
6 file an appeal with the appeals commission.

7 The local governing body of the municipality shall designate or
8 establish a municipal agency to serve as the appeals commission. The
9 local governing body shall also establish rules of procedure adequate
10 to assure a prompt and thorough review of matters submitted to the
11 appeals commission, and such rules of procedure shall include the
12 following, without being limited thereto: (i) All matters submitted to
13 the appeals commission must be resolved by the commission within sixty
14 days from the date of filing therewith and (ii) a transcript of the
15 findings of fact of the appeals commission shall be made available to
16 the owner or other party in interest upon demand.

17 The findings and orders of the appeals commission shall be reported
18 in the same manner and shall bear the same legal consequences as if
19 issued by the board, and shall be subject to review only in the manner
20 and to the extent provided in subdivision (2) of this section.

21 If the owner or party in interest, following exhaustion of his
22 rights to appeal, fails to comply with the final order to repair,
23 alter, improve, vacate, close, remove, or demolish the dwelling,
24 building, structure, or premises, the board or officer may direct or
25 cause such dwelling, building, structure, or premises to be repaired,
26 altered, improved, vacated, and closed, removed, or demolished.

27 (h) That the amount of the cost of such repairs, alterations or
28 improvements; or vacating and closing; or removal or demolition by the
29 board or officer, shall be assessed against the real property upon
30 which such cost was incurred unless such amount is previously paid.
31 Upon certification to him by the treasurer of the municipality in cases
32 arising out of the city or town or by the county improvement board or
33 officer, in cases arising out of the county, of the assessment amount
34 being due and owing, the county treasurer shall enter the amount of
35 such assessment upon the tax rolls against the property for the current
36 year and the same shall become a part of the general taxes for that
37 year to be collected at the same time and with interest at such rates
38 and in such manner as provided for in RCW 84.56.020, as now or
39 hereafter amended, for delinquent taxes, and when collected to be

1 deposited to the credit of the general fund of the municipality. If
2 the dwelling, building, structure, or premises is removed or demolished
3 by the board or officer, the board or officer shall, if possible, sell
4 the materials of such dwelling, building, structure, (~~{or}~~) or
5 premises in accordance with procedures set forth in said ordinance, and
6 shall credit the proceeds of such sale against the cost of the removal
7 or demolition and if there be any balance remaining, it shall be paid
8 to the parties entitled thereto, as determined by the board or officer,
9 after deducting the costs incident thereto.

10 The assessment shall constitute a lien against the property which
11 shall be of equal rank with state, county and municipal taxes.

12 (2) Any person affected by an order issued by the appeals
13 commission pursuant to subdivision (1)(f) hereof may, within thirty
14 days after the posting and service of the order, petition to the
15 superior court for an injunction restraining the public officer or
16 members of the board from carrying out the provisions of the order. In
17 all such proceedings the court is authorized to affirm, reverse, or
18 modify the order and such trial shall be heard de novo.

19 (3) An ordinance adopted by the local governing body of the
20 municipality may authorize the board or officer to exercise such powers
21 as may be necessary or convenient to carry out and effectuate the
22 purposes and provisions of this section. These powers shall include
23 the following in addition to others herein granted: (a)(i) To
24 determine which dwellings within the municipality are unfit for human
25 habitation; (ii) to determine which buildings, structures, or premises
26 are unfit for other use; (b) to administer oaths and affirmations,
27 examine witnesses and receive evidence; and (c) to investigate the
28 dwelling and other property conditions in the municipality or county
29 and to enter upon premises for the purpose of making examinations when
30 the board or officer has reasonable ground for believing they are unfit
31 for human habitation, or for other use: PROVIDED, That such entries
32 shall be made in such manner as to cause the least possible
33 inconvenience to the persons in possession, and to obtain an order for
34 this purpose after submitting evidence in support of an application
35 which is adequate to justify such an order from a superior court of
36 competent jurisdiction in the event entry is denied or resisted. Upon
37 application, the superior court may issue an order to show cause, which
38 shall be served upon the owner or owner's agent and any person in
39 lawful possession of the premises to be inspected. The order to show

1 cause shall set a date, not less than ten and not more than thirty
2 court days after the date of the order, for a hearing to determine
3 whether an order should issue authorizing entry onto the property. The
4 order to show cause must be served on the owner or owner's agent and,
5 if applicable, any person in lawful possession of the premises no later
6 than ten court days before the scheduled hearing. If the owner or
7 owner's agent, or the persons in lawful possession of the property,
8 cannot be personally served, then service may be effected by posting a
9 copy of the order on the building, structure, or dwelling, and sending
10 a copy of the order by certified mail to the last known address of the
11 owner and owner's agent, if any.

12 At the hearing, the agency, the owner or owner's agent, and any
13 occupant may present evidence, through testimony or declarations. The
14 superior court shall issue an order authorizing entry if it finds
15 reason to believe that the particular building, structure, or dwelling
16 is unfit for human habitation, according to the definitions described
17 in subsection (1)(d) of this section.

18 (4) The local governing body of any municipality adopting an
19 ordinance pursuant to this chapter may appropriate the necessary funds
20 to administer such ordinance.

21 (5) Nothing in this section shall be construed to abrogate or
22 impair the powers of the courts or of any department of any
23 municipality to enforce any provisions of its charter or its ordinances
24 or regulations, nor to prevent or punish violations thereof; and the
25 powers conferred by this section shall be in addition and supplemental
26 to the powers conferred by any other law.

27 (6) Nothing in this section shall be construed to impair or limit
28 in any way the power of the municipality to define and declare
29 nuisances and to cause their removal or abatement, by summary
30 proceedings or otherwise.

31 (7) Any municipality may (by ordinance adopted by its governing
32 body) (a) prescribe minimum standards for the use and occupancy of
33 dwellings throughout the municipality, or county, (b) prescribe minimum
34 standards for the use or occupancy of any building, structure, or
35 premises used for any other purpose, (c) prevent the use or occupancy
36 of any dwelling, building, structure, or premises, which is injurious
37 to the public health, safety, morals, or welfare, and (d) prescribe
38 punishment for the violation of any provision of such ordinance.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27 RCW
2 to read as follows:

3 Whenever necessary to make an inspection to enforce any provision
4 of the fire code, or whenever the chief has reasonable cause to believe
5 that there exists in any building or upon any premises any condition
6 which makes such building or premises unsafe, the chief is authorized
7 to enter such building or premises at all reasonable times to inspect
8 the same or to perform any duty authorized by the fire code, however,
9 if such building or premises is occupied, the chief fire official, or
10 his or her designee, shall first present proper credentials and request
11 entry; and if such building or premises is unoccupied, the chief shall
12 first make a reasonable effort to locate the owner or other persons
13 having charge or control of the building or premises and demand entry.

14 If the owner or occupant denies entry, the chief is authorized to
15 obtain a proper inspection warrant or other remedy provided by law to
16 secure entry. A judge of the superior court shall have authority to
17 issue a civil or criminal inspection warrant. However, a judge may not
18 issue an inspection warrant for a private individual dwelling unit when
19 the sole basis for the warrant application is that the building or
20 premises fall within the scope of a systematic inspection program.
21 Owners, occupants, or any other persons having charge, care, or control
22 of any building or premises, after proper request is made as provided
23 by this section, promptly permit entry therein by the chief for the
24 purpose of inspection and examination pursuant to the fire code.

25 For the purposes of this section, the term "chief" includes the
26 chief officer of the fire department serving the jurisdiction and his
27 or her designee.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.28 RCW
29 to read as follows:

30 The judges of the superior courts have power to issue civil
31 inspection warrants under the following circumstances: If probable
32 cause exists to believe that conditions in a particular building or
33 premises pose a serious threat to life or safety of the occupants or
34 neighbors, human health, or the environment, the government agency with
35 jurisdiction may apply to the superior court judge of the county in
36 which the building or premises is located for an order to show cause
37 why the government agency should not be authorized to enter.

1 Upon application, the judge of the superior court may issue an
2 order to show cause, which shall be served upon the owner or owner's
3 agent and any occupant. The order to show cause shall set a date, not
4 less than ten and not more than thirty court days after the date of the
5 order, for a hearing to determine whether an order should issue
6 authorizing entry onto the property. The order to show cause must be
7 served on the owner or owner's agent and, if applicable, any person
8 having lawful possession of the property, no later than ten court days
9 before the scheduled hearing. If the owner or owner's agent or the
10 person having lawful possession of the property cannot be personally
11 served, then service may be effected by posting a copy of the order on
12 the building, structure, or dwelling, and sending a copy of the order
13 by certified mail to the owner's last known address.

14 At the hearing, the agency, the owner or owner's agent, and any
15 person to whom the order to show cause was directed, may present
16 evidence through testimony or declarations. The superior court judge
17 shall issue an order authorizing entry if the judge finds that there is
18 reason to believe that the particular building or premises harbors
19 conditions that pose a serious threat to life or safety of the
20 occupants or neighbors, or to the environment.

21 No order under this section may issue for purely residential
22 property or commercial office buildings. Nothing in this section
23 affects any power that any other statute, or court rule, may grant to
24 a judicial officer to authorize nonconsensual inspections or searches.

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